

## REMARKS

Claims 2-4, 6, 8-19, 21-23, 25, 27-39, 56-61, 64-77, and 80-89 are pending in this application. Claims 6, 8, 21-22, 25, 27, 36, 56, and 74 have been amended.

The Examiner rejected claims 21-23 under 35 U.S.C. § 112, second paragraph, due to the recitation of an incorrect dependency in claims 21 and 22. The Applicants have amended these claims to recite the correct parent claim. The Examiner is kindly requested to withdraw his rejection of claims 21-23 under § 112, second paragraph.

The Examiner rejected claims 27-35 under 35 U.S.C. § 112, second paragraph, as being indefinite. The typographical error in independent claim 27 noted by the Examiner has been corrected. Accordingly, the Examiner is kindly requested to withdraw his rejection of claims 27-35.

The Examiner rejected claim 6 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,260,024 to Shkedy ("Shkedy") in view of Official Notice.

Independent claim 6, prior to the amendments herein, recited, *inter alia*, "receiving purchase authorization from at least one buyer in the group to buy the product/service from one of the at least one seller or the at least another seller." In rejecting claim 6, the Examiner cites Shkedy at Col. 5, lines 43-60, as disclosing the limitation recited above.

Shkedy in the cited passage actually discloses something quite different, namely:

At step 54, the central controller 200 determines a maximum offer price for the submitted FPO 100 and transmits that price back to the buyer. The central controller 200 may add legal language to the FPO 100 to make it explicit to the buyer that should the buyer accept the maximum offer price he will be entering into a binding agreement. Step 56 is a determination step for the buyer 16 to decide whether he is willing to accept the maximum offer price provided by the central controller 200. If not, the FPO 100 creation process terminates at step 58. Otherwise, if the buyer accepts the maximum offer price his FPO 100 will be included in the pool purchase order at step 60 by transmitting his intention to accept to the central controller 200. The buyer has now consented to entering into a

legally binding contract with the intermediary and will accept the best price that the intermediary determines in the bidding process subject to the condition that the buyer will pay no more for the item or service than the stipulated maximum offer price. Col. 5, lines 43-60, *emphasis added*.

Thus, Shkedy's steps 54-60 disclose a system in which the buyer(s) interact with a single central controller (and not a seller) to determine a price. Shkedy further discloses that the sellers become involved only after the buyer(s) and the central controller have agreed upon a price, whereupon at step 66, Shkedy discloses:

At step 66 the central controller 200 publishes or displays the PPO 110 in a manner accessible by potential sellers. Col. 6, lines 3-5.

Claim 6, prior to the amendments herein, clearly distinguishes over Shkedy, but to further emphasize the differences, the Applicants have amended claim 6 herein to recite:

receiving purchase authorization from at least one buyer in the group to buy the product/service from one of the at least one seller at the suggested price quotation or the at least another seller at the another suggested price quotation.

Independent claim 6 also recites that a second seller may review the price quotation provided by a first seller and offer buyers another price quotation.

The Examiner *concedes* that Shkedy does not disclose that sellers can review prices submitted by other sellers. The Examiner takes Official Notice that this limitation of claim 6 is old in the computerized group purchasing arts and further explains that this practice is a feature of "Dutch auctions."

The Applicants respectfully traverse the Examiner's taking of Official Notice for this limitation of claim 6. The Applicants submitted in an earlier information disclosure statement a reference that describes "Dutch auctions." (*See*, item C13 of the IDS submitted by Applicants on January 31, 2003.) Another copy of this reference's description of Dutch auctions is provided herein.

According to the attached references from "Agorics," there are two types of auctions known as "Dutch auctions," a descending price auction and a uniform second-price auction (also

known as a “Vickery auction”). Neither of the attached Dutch auction descriptions matches the Examiner’s description of a Dutch auction. In addition, neither of the Dutch auction descriptions disclose multiple seller auctions. Thus, neither description discloses allowing a seller to review another seller’s submitted price.

Since the Examiner apparently has personal knowledge of “Dutch auctions” that differs from the available references, the Applicants respectfully request that the Examiner fulfill his duties under 37 CFR 1.104(d)(2):

When a rejection in an application is based on facts within the personal knowledge of an employee of the Office, the data shall be as specific as possible, and the reference must be supported, when called for by the applicant, by the affidavit of such employee, and such affidavit shall be subject to contradiction or explanation by the affidavits of applicant and other persons. (Emphasis added.)

If upon further reflection, the Examiner still believes that Official Notice is appropriate, then Applicants kindly call for the Examiner to prepare the affidavit required by 37 CFR 1.104(d)(2).

Moreover, the disclosure of Dutch auctions provided by the Applicants is not a buyer-driven process but is a seller-driven process. Shkedy discusses the limitations of seller-driven processes such as auctions. (*See*, Col. 1, lines 39-56.) Shkedy even discusses the limitations of certain buyer-driven processes before stating:

The problem with the above system is that the buyer is now accepting all the risk in determining a fair price for the goods and services he requires. If he provides a low bid, no seller would choose to bind his contract. On the other hand, if he overbids, sellers would jump at the opportunity to enter into a binding contract with him. Also, if he overspecifies the conditions of his offer, he may never be able to find a seller willing to offer him the goods. Col. 2, lines 10-16.

Thus, Shkedy’s disclosure explicitly teaches away from combining his approach with any seller-driven auction, including a Dutch auction. A prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention.

*W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984), *cited* at MPEP 2141.02, emphasis in original.

In short, an ordinary artisan would not know which parts of Shkedy and which parts of the Examiner's Official Notice to use and which parts to ignore, absent Applicants' claimed invention – assuming *arguendo* that some combination of these references even disclosed Applicants' claimed invention. Accordingly, there is simply no motivation to combine Shkedy with the Examiner's Official Notice, even assuming that the Examiner's description of a Dutch auction is correct.

Neither Shkedy, nor the Examiner's Official Notice, nor any motivated combination, teach or suggest the invention recited in claim 6. Accordingly, the Examiner is respectfully requested to withdraw his rejection of claim 6 under 35 U.S.C. § 103(a).

The Examiner rejected claims 25 and 74 under 35 U.S.C. § 103(a) as being unpatentable over Shkedy in view of USP 6,269,343 to Pallakoff ("Pallakoff"), and in further view of Official Notice.

The Examiner states that he rejects claims 25 and 74 under the same rationale that he rejected claim 6. Accordingly, Applicants traverse this rejection on the same grounds that the Applicants traversed the rejection of claim 6 above.

In addition, the Applicants have amended claims 25 and 74 to recite that buyer purchase requests are received only after the seller has submitted a purchase price or a price reduction. As discussed above, Shkedy clearly discloses the opposite process – buyers must first agree to purchase a product and then sellers bid on a price.

The Applicants again request that the Examiner provide an affidavit describing his personal knowledge of Dutch auctions that forms the basis of his Official Notice. Applicants similarly traverse the Examiner's Official Notice for the reasons cited above.

Pallakoff and the Examiner's Official Notice do not compensate for the deficiencies of Shkedy.

Moreover, Shkedy specifically teaches away from seller-driven systems – like Pallakoff and the Examiner’s description of a Dutch auction. As recited in MPEP 2141.02, a prior art reference must be considered in its entirety, *i.e.*, as a whole, including portions that would lead away from the claimed invention. In short, an ordinary artisan would not know which parts of Shkedy and which parts of Pallakoff to use and which parts to ignore, absent Applicants’ claimed invention – assuming *arguendo* that some combination of these references even disclosed Applicants’ claimed invention.

Neither Shkedy, nor the Examiner’s Official Notice, nor Pallakoff, nor any motivated combination, teach or suggest the inventions recited in claims 25 and 74. Accordingly, the Examiner is respectfully requested to withdraw his rejection of claims 25 and 74 under 35 U.S.C. § 103(a).

The Examiner rejected claim 36 under 35 U.S.C. § 103(a) as being unpatentable over Shkedy in view of Pallakoff.

Claim 36, prior to the amendments herein, recited, *inter alia*, “a sixth portion that verifies that buyers in the group satisfy a membership requirement of having a common employer.”

The Examiner finds that Shkedy discloses this limitation as:

Cryptographic protocols are provided to authenticate the identity of buyers and/or sellers and verify the integrity of buyer and seller communications with the central controller 200. Col. 7, lines 5-8, emphasis added.

Shkedy further explains the need to authenticate buyers:

The practice of using cryptographic protocols to ensure the authenticity of senders as well as the integrity of messages is well known in the art and need not be described here in detail. Col. 21, lines 45-47, emphasis added.

Shkedy’s disclosure is quite clearly limited to authenticating that buyers are who they say they are and not someone else. This is quite likely a wise choice for a purveyor of goods over an electronic medium – but it does not disclose a check to determine that a “membership requirement” has been fulfilled – namely, that the buyers have a common employer.

Moreover, Shkedy's authentication step has a different temporal element than the Applicants' claimed check for a "membership requirement." To further clarify this distinction, the Applicants have amended claim 36 to recite that the "membership requirement" is a "predetermined membership requirement."

Pallakoff does not compensate for the deficiencies of Shkedy.

In addition, for the reasons discussed above, the Applicants again note that Shkedy and Pallakoff are not properly combinable as references.

Neither Shkedy, nor Pallakoff, nor any motivated combination of these references, teach or suggest the invention recited in claim 36. Accordingly, the Examiner is respectfully requested to withdraw his rejection of claims 36 under 35 U.S.C. § 103(a).

The Examiner rejects claims 8 and 56 under 35 U.S.C. § 103(a) as being unpatentable over Shkedy in view of Official Notice.

As discussed above, the cited portion of Shkedy pertains to "authenticating" buyers, *e.g.*, "Is this buyer who he says he is?" Shkedy does not disclose a check to determine that a requirement for a sale has been fulfilled—namely, that the buyers have a common employer.

Moreover, Shkedy's authentication step has a different temporal element than the Applicants' claimed check of a "requirements list." To further clarify this distinction, the Applicants have amended claims 8 and 56 to recite that the "requirements list" is a "predetermined requirements list."

The Examiner's Official Notice does not compensate for the deficiencies of Shkedy.

Applicants again request the Examiner to provide an affidavit detailing his knowledge of "Dutch auctions." In addition, Applicants again suggest that Shkedy is not properly combinable with the Examiner's Official Notice for the reasons cited above.

Neither Shkedy, nor the Examiner's Official Notice, nor any motivated combination of these references, teach or suggest the inventions recited in claims 8 and 56. Accordingly, the

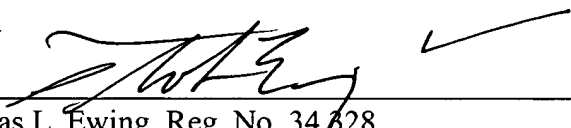
Examiner is respectfully requested to withdraw his rejection of claims 8 and 56 under 35 U.S.C. § 103(a).

Those claims not specifically mentioned above either recite a feature described above or ultimately depend from a claim described above.

For the reasons stated above, the Applicants respectfully submit that the pending claims are allowable over the cited references and request that the application be passed to issue. If the Examiner believes that direct contact with the Applicants' attorney will advance the prosecution of this case, the Examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,  
AMIR ALON *ET AL.*

Dated: July 23, 2003

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ATTACHMENT

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## **Auction Types--Dutch**

**-by Kate Reynolds**

### **One in a Series of Articles from Agorics, Inc.**

The descending-price auction, commonly known in academic literature as the Dutch auction, uses an open format rather than a sealed-bid method. It is the technique used in Netherlands to auction produce and flowers (hence, a "Dutch" auction). Unfortunately, the financial world has chosen to refer to another type of auction as the Dutch auction. In the financial world, the auction known as "Dutch" is what is referred to in the academic world as a uniform, second-price auction. Great confusion results. In this series of articles, the "Dutch" auction will mean a descending-bid structure.

In a Dutch auction, bidding starts at an extremely high price and is progressively lowered until a buyer claims an item by calling "mine", or by pressing a button that stops an automatic clock. When multiple units are auctioned, normally more takers press the button as price declines. In other words, the first winner takes his prize and pays his price and later winners pay less. When the goods are exhausted, the bidding is over.

Dutch auctions have been used to finance credit in Rumania and for foreign exchange in Bolivia, Jamaica, Zambia and have also been used to sell fish in England and in Israel.

Dutch auctions are common in less obvious forms. Filene's, a large store in Boston, keeps in its basement a variety of marked-down goods, each with a price and date attached. The price paid at the register is the price on the tag minus a discount that depends upon how long ago the item was tagged. As time passes and the item remains unsold, the discount rises from 10 to as high as 70 percent.

It is believed that the English system may be inferior to Dutch in one area. The key to any successful auction (from the seller's point of view) is the effect of competition on the potential buyers, and in an English auction, the underbidder usually forces the bid up by one small step. The winner may end up paying well



under his valuation and thus the seller does not receive the maximum price.

However, in the Dutch system, if the bidder with the highest interest really wants an item, he cannot afford to wait too long to enter his bid. That means he might bid at or near his highest valuation.

| Characteristics of Different Types of Auctions |  |
|--|--|
| Type   | Rules  |
| English, or ascending-price. Open.             | Seller announces reserve price or some low opening bid. Bidding increases progressively until demand falls. Winning bidder pays highest valuation. Bidder may re-assess evaluation during auction. |
| Dutch, or descending-price. Open.              | Seller announces very high opening bid. Bid is lowered progressively until demand rises to match supply.   |

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## **Auctions -- The Vickrey Auction**

### **(Uniform second-price)**

**-by Kate Reynolds**

**One in a Series of Articles from Agorics, Inc.**

The uniform second-price auction is commonly called the Vickrey auction, named after William Vickrey, [Vickrey] winner of the 1996 Nobel Prize in Economic Sciences, who classified it in the 1960s. Like the first-price auction, the bids are sealed, and each bidder is ignorant of other bids. (In the financial community, the uniform, second-price auction is called the Dutch auction, but in these papers we will use the academic names.)

The item is awarded to highest bidder at a price equal to the second-highest bid (or highest unsuccessful bid). In other words, a winner pays less than the highest bid. If, for example, bidder A bids \$10, bidder B bids \$15, and bidder C offers \$20, bidder C would win, however he would only pay the price of the second-highest bid, namely \$15.

There is one interesting and crucial point and that is that when auctioning multiple units, all winning bidders pay for the items at the same price (the highest losing price). We will see later that the U.S. Treasury Department is experimenting with this type of auction to sell the national debt.

One wonders why any seller would choose this method to auction goods. It seems obvious that a seller would make more money by using a first-price auction, but, in fact, that has been shown to be untrue. Bidders fully understand the rules and modify their bids as circumstances dictate. In the case of a Vickrey auction, bidders adjust upward. No one is deterred out of fear that he will pay too high a price. Aggressive bidders receive sure and certain awards but pay a price closer to market consensus. The price that winning bidder pays is determined by competitors' bids alone and does not depend upon any action the bidder undertakes. Less bid shading occurs because people don't fear winner's curse. Bidders are less inclined to compare notes before

an auction.

This type of auction has been used in former Czechoslovakia to refinance credit and in Guinea, Nigeria, and Uganda for foreign exchange.

What about changing the format just a little and having a second-price, open-outcry auction? In such a case, participants could bid in the ascending format and the winner would ultimately pay the price of the second-highest bid. One might imagine that such an auction would have much the same results as an English (ascending, open-outcry) auction, but, in fact, an auction like that would be easy to manipulate. Imagine bidder A bidding \$25 for an item worth \$100. Some other bidder could quite easily and safely bid \$750, knowing that no one will bid more and that he will only pay \$25. Clearly it is imperative to seal the bid.

| <b>Characteristics of Different Types of Auctions</b>   |  |
|---|--|
| <b>Type</b>   | <b>Rules</b>   |
| English, or ascending-price. Open.  | Seller announces reserve price or some low opening bid. Bidding increases progressively until demand falls. Winning bidder pays highest valuation. Bidder may re-assess evaluation during auction. |
| Dutch, or descending-price. Open.   | Seller announces very high opening bid. Bid is lowered progressively until demand rises to match supply.   |
| First-price, sealed bid. Known as discriminatory auction when multiple items are being auctioned. | Bids submitted in written form with no knowledge of bids of others. Winner pays the exact amount he bid.   |
| Vickrey auction or second-price sealed  | Bids submitted in written  |

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|--|--|
| bid. Known as<br>uniform-price<br>auction when<br>multiple items are<br>being auctioned. | form with no knowledge<br>of the bids of others.<br>Winner pays the second-<br>highest amount bid. |
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